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**STATE OF TENNESSEE  
BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

**DEPT. OF FINANCIAL INSTITUTIONS,  
COMPLIANCE DIVISION,**

**Petitioner,**

**v.**

**EXCLUSIVE METRO MORTGAGE, LLC,**

**Respondent.**

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SECRETARY OF STATE

**Docket No.: 03.06-100784J**

**TDFI No.: 07-72-C**

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**NOTICE OF DEFAULT AND INITIAL ORDER**

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This matter came to be heard on January 13<sup>th</sup>, 2009, at 10:00 a.m. central standard time, before Administrative Judge William J. Reynolds of the Administrative Procedures Division of the Tennessee Department of State, sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner"). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Petitioner") was represented by Derek Church, a staff attorney with the Department of Financial Institutions. No attorney has made an appearance on behalf of Exclusive Metro Mortgage, LLC (hereinafter, "Respondent").

Judge William J. Reynolds is vested with jurisdiction to hear this matter on behalf of the Commissioner pursuant to Tenn. Code Ann. § 45-1-105 and the Tennessee Residential Lending, Brokerage and Servicing Act of 1988 as amended, at Tenn. Code Ann. §§ 45-13-101 *et seq.* (hereinafter, "Mortgage Act"). This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, initiated by the Petitioner seeking an order directing the Respondent to:

(1) pay a civil monetary penalty of up to twenty thousand dollars (\$20,000) for the two (2) violations of Tenn. Code Ann. § 45-13-108(a)(3); and, (2) pay a second civil monetary penalty of up to two hundred thousand dollars (\$200,000) for the twenty (20) violations of Tenn. Code Ann. § 45-13-126(a).

After consideration of the pleadings, the argument of counsel, and the entire record as a whole, it is **DETERMINED** that the maximum relief requested by the Petitioner in the Notice of Charges **SHOULD** be granted. Said decision is based on the Preliminary Rulings And Order of Default, Findings of Fact, and Conclusions of Law stated below.

#### **I. PRELIMINARY RULINGS AND ORDER OF DEFAULT**

At 3:00 p.m. central standard time on January 8, 2009, and upon the Petitioner's motion, a telephonic pre-hearing conference was convened for the purpose of discussing the Petitioner's motion to have the Petitioner's Requests for Admission deemed admitted. The Respondent did not make an appearance at said pre-hearing telephonic conference. Without argument to the contrary, it was determined at said pre-hearing conference that the Respondent was served by the Petitioner with Requests for Admission on March 3, 2008, and that the Respondent failed to serve upon the Petitioner a written response or objection to the Requests within thirty (30) days (or at any time thereafter prior to said pre-hearing conference). As such, the Petitioner's motion to have the Requests for Admission deemed admitted as a matter of law was granted in accordance with Tenn. R. Civ. P. 36.01.

At hearing of this matter on January 13, 2009, the Petitioner's motion for default was granted pursuant to Tenn. Code Ann. § 4-5-309(a) after the Respondent failed to

appear at the hearing, after having proper notice thereof. The record indicates that the Respondent was duly notified of this matter on January 29, 2008 and several times thereafter, and that the Respondent was specifically notified of the hearing by Order dated November 17, 2008 and by phone call(s) of the Petitioner's attorney during the week preceding the date of hearing. Having held the Respondent in **DEFAULT**, the matter was tried as uncontested. The Petitioner relied on the admitted Requests for Admission to prove its case, on which are based the following Findings of Fact.

## **II. FINDINGS OF FACT**

1. The Respondent is a for-profit Limited Liability Company organized under the laws of the State of Georgia, whose principal office is currently located at 1402 Hampton Crest Drive, Kennesaw, Georgia 30152.

2. On or prior to January 29, 2008, the Respondent was served with a "Notice of Opportunity for a Hearing and the Rights of the Respondent" and a "Notice of Charges" in the above-captioned case (hereinafter, collectively, "Notice of Charges").

3. The Notice of Charges informed the Respondent of the Department's allegations against it and that it could contest said allegations by first filing a written request for a hearing with the Commissioner, provided that said request be filed within thirty (30) days of notice.

4. The Respondent failed to file a written request for a hearing with the Commissioner within thirty (30) days of January 29, 2008.

5. At all times relevant hereto, Frank Thrift was a member of the Respondent.

6. As of February 29, 2008, Frank Thrift had not legally disassociated himself from the Respondent with the State of Georgia.

7. At all times relevant hereto, Angela Thrift was the wife of Frank Thrift.

8. Angela Thrift signed the United States Postal Service certified mail receipt card that accompanied the Notice of Charges and, on the same date, then delivered to or notified Frank Thrift of the contents of the Notice of Charges.

9. As of February 29, 2008, Glenn A. Delk, 1355 Peachtree St., NE, Suite 1150, Atlanta, Georgia 30309, was the Respondent's Georgia registered agent.

10. On or about August 31, 2004, the State of Illinois Department of Financial and Professional Regulation, Division of Banks and Real Estate, issued an "Order to Cease and Desist" to the Respondent, ordering the Respondent to cease and desist from using the name of any existing Illinois state-chartered bank in connection with marketing or solicitation materials, absent express consent to do so and compliance with applicable law.

11. On or about March 16, 2005, the Georgia Department of Banking and Finance issued a "Cease and Desist Order" to the Respondent, ordering the Respondent to cease and desist from violating the Georgia Residential Mortgage Act by employing a felon.

12. On or about May 20, 2005, the Respondent submitted to the Department a form entitled "Registration Application" (hereinafter, "Application"), by which the Respondent applied to be registered with the Department as a mortgage broker under the Mortgage Act.

13. On the Application, under section I regarding “Business Entity Information,” and also under sub-section C regarding “Regulatory History,” the Respondent checked “No” in response to the question: “Has the Applicant ever been subject to any administrative action by a State or Federal Regulatory Agency?”

14. The Application was signed and affirmed to by Frank Thrift, President of the Respondent, on or about April 20, 2005.

15. On or about November 1, 2005, the Respondent filed a form with the Department entitled “Registrant Renewal Application,” on which the Respondent again checked “No” in response to the question: “Has the Applicant ever been subject to any administration action by a State or Federal Regulatory Agency?”

16. The actions taken by the States of Illinois and Georgia, referenced in paragraphs ten (10) and eleven (11), above, respectively, constitute “administrative actions” under the Mortgage Act.

17. Neither of the actions referenced in paragraphs ten (10) and eleven (11), above, has ever been disclosed by the Respondent to the Commissioner in any written submission or otherwise, but were discovered by the Petitioner, on its own initiative, on or about August 15, 2007.

18. Tenn. Code Ann. § 45-13-108(a)(3) provides that the making of a false statement in any application or report filed with the Commissioner is a violation of the Mortgage Act, and is also grounds for suspension or revocation of a certificate of registration issued pursuant to the Mortgage Act.

19. Over the course of six (6) days during the months of May, June, and July, 2007, the Petitioner had compliance examiners Kamela Settles and Kerry Rial

(hereinafter, collectively referred to as the “Examiners”), conduct an examination (hereinafter, “Examination”) of the Respondent’s business, which included the collection and review of records of the Respondent, including mortgage loan documents, for compliance with the Mortgage Act.

20. On or about July 13, 2007, the Examiners completed a Report of Examination (hereinafter, “Report”), in which they cited the Respondent for several violations of the Mortgage Act.

21. In the Report, under the “Violations from Examination” section, at Violation number 5 (hereinafter, “Violation 5”), the Examiners cited the Respondent for violating the Mortgage Act at Tenn. Code Ann. § 45-13-126 by allowing several individuals to perform loan origination services for the Respondent while said individuals were not properly registered with the Department as mortgage loan originators.

22. On behalf of the Respondent, Alondra Hubbard originated a loan identified on the HUD-1 Settlement Statement (hereinafter, “HUD-1”) as loan number 1942951, which was closed on June 26, 2006.

23. On behalf of the Respondent, Carl Boneri originated a loan identified on the HUD-1 as loan number 1210317, which was closed on May 26, 2006.

24. On behalf of the Respondent, Chase Woody originated a loan identified on the HUD-1 as loan number 1439627, which was closed on November 29, 2006.

25. On behalf of the Respondent, Kevin Cockfield originated a loan identified on the HUD-1 as loan number 52511590, which was closed on July 5, 2006.

26. On behalf of the Respondent, Sean Cotton originated a loan identified on the HUD-1 as loan number 876792, which was closed on August 4, 2005.

27. On behalf of the Respondent, Cameron Davis originated a loan identified on the HUD-1 as loan number 2003827607, which was closed on September 7, 2006.

28. On behalf of the Respondent, David DiTirro originated a loan identified on the HUD-1 as loan number 3030067144, which was closed on July 27, 2005, as well as a second loan that is identified on the HUD-1 as loan number 1000255557, which was closed on July 10, 2006, and also a third loan, identified on the HUD-1 as loan number 28853, which was closed on September 7, 2006.

29. On behalf of the Respondent, Veronica Gilchrist originated a loan identified on the HUD-1 as loan number 2330060400810, which was closed on April 28, 2006.

30. On behalf of the Respondent, Bobby Moorefield originated a loan identified on the HUD-1 as loan number 9201224439, which was closed on August 17, 2005, as well as a loan identified on the HUD-1 as loan number 20813, which was closed on October 6, 2005.

31. On behalf of the Respondent, Kathy Morris originated a loan identified on the HUD-1 as loan number 6962175151, which was closed on February 2, 2007.

32. On behalf of the Respondent, Virginia Morris originated a loan identified on the HUD-1 as loan number 7049533186, which was closed on May 4, 2006.

33. On behalf of the Respondent, Sheldon Pinsker originated a loan identified on the HUD-1 as loan number 111769042, which was closed on August 19, 2005.

34. On behalf of the Respondent, Thomas Shea originated a loan identified on the HUD-1 as loan number 2500000589, which was closed on August 19, 2005.

35. On behalf of the Respondent, Don Smith originated a loan identified on the HUD-1 as loan number 6200008166, which was closed on August 26, 2005.

36. On behalf of the Respondent, Michael Steffens originated a loan identified on the HUD-1 as file number 05-1698A, which was closed on September 2, 2005.

37. On behalf of the Respondent, Jason Williamson originated a loan identified on the HUD-1 as loan number 1269336, which was closed on July 21, 2006, as well as a loan identified on the HUD-1 as loan number 729487140, which closed on August 30, 2006.

38. The origination activity referenced in paragraphs twenty-two (22) through thirty-seven (37), above, consisted of the taking of Uniform Residential Loan Applications (hereinafter, "URLAP"), among other things.

39. None of the individuals identified in paragraphs twenty-two (22) through thirty-seven (37), above, were registered with the Department as mortgage loan originators of the Respondent at the time of the referenced origination activity.

40. The twenty (20) mortgage loans referenced in paragraphs twenty-two (22) through thirty-seven (37), above, were all secured by real property situated in Tennessee.

41. Soon after receiving the Report, the Respondent drafted and sent the Petitioner a document entitled "TN Audit Responses" (hereinafter, "Response"), in which the Respondent responded to the violations cited in the Report.

42. In the Response, and in regards to Violation 5, the Respondent admitted that "several loan officers were shown to have closed loans before they were licensed to do so in the state of Tennessee."



43. Also, in the Response, the Respondent wrote that “it is now the policy of Exclusive Metro Mortgage that all loan officers become licensed in the state of Tennessee upon hire.”

44. Tenn. Code Ann. § 45-13-126(a) provides that, “[b]efore an individual may provide services as a mortgage loan originator for a licensee or registrant, that individual shall be registered with the commissioner in affiliation with that licensee or registrant.”

45. Mortgage loan origination services are defined at Tenn. Code Ann. §§ 45-13-102(12) and (13) to include the solicitation, placement, negotiation, or origination of a mortgage loan.

46. The taking of a loan application, such as a URLAP, constitutes mortgage loan origination.

47. The Requests for Admission reference at least twenty-two (22) violations of the Mortgage Act by the Respondent.

### **III. CONCLUSIONS OF LAW**

48. Tenn. Code Ann. § 45-13-108(a)(3) provides that the making of a false statement in any application or report filed with the Commissioner is a violation of the Mortgage Act.

49. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent committed two (2) violations of Tenn. Code Ann. § 45-13-108(a)(3) by falsely stating to the Commissioner, in both its May 20, 2005 “Registration Application” and in its November 1, 2005 “Registrant Renewal Application,” that it had not been subjected to prior administrative action by a State or Federal Regulatory Agency

when, in fact, the Respondent had previously been subjected to administrative action by regulatory agencies of both the States of Illinois and Georgia.

50. Tenn. Code Ann. § 45-13-126(a) provides that, “[b]efore an individual may provide services as a mortgage loan originator for a licensee or registrant, that individual shall be registered with the commissioner in affiliation with that licensee or registrant.” Mortgage loan origination services are defined at Tenn. Code Ann. §§ 45-13-102(12) and (13) to include the origination of a mortgage loan. The taking of a loan application constitutes mortgage loan origination.

51. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent committed twenty (20) violations of Tenn. Code Ann. § 45-13-126(a) by having the individuals referenced above originate the referenced twenty (20) mortgage loans through the taking of loan applications while said individuals were not registered with the Department as mortgage loan originators of the Respondent.

52. Tenn. Code Ann. § 45-13-116 provides that, if after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Mortgage Act, the Commissioner may take any or all of the following actions:

- (1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter;
- (2) Require the refund of any interest, fees, or charges collected by such person in violation of this chapter or any administrative rule issued pursuant to this chapter; and/or
- (3) Order the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant to this chapter.

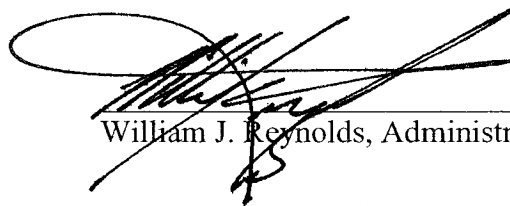
53. Because the Findings of Fact are sufficient to establish by a preponderance of the evidence that the Respondent has committed the twenty-two (22) violations of the

Mortgage Act stated herein, Tenn. Code Ann. § 45-13-116 provides grounds to order the Respondent to pay a civil monetary penalty of two hundred and twenty thousand dollars (\$220,000).

#### IV. ORDER

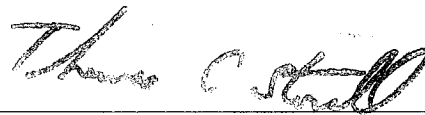
IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Respondent, Exclusive Metro Mortgage, LLC, shall pay a civil monetary penalty totaling two hundred and twenty thousand dollars (\$220,000) for the two (2) violations of Tenn. Code Ann. § 45-13-108(a)(3) and the twenty (20) violations of Tenn. Code Ann. § 45-13-126(a).

This Initial Order entered and effective this 3<sup>RD</sup> day of FEB, 2009.



William J. Reynolds, Administrative Judge

Filed in the Administrative Procedures Division this 3<sup>RD</sup> day of FEB, 2009.



Thomas G. Stovall, Director

## **APPENDIX A TO INITIAL ORDER**

### **NOTICE OF APPEAL PROCEDURES**

#### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

#### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.